IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

**WP(C).No. 22826 of 2006(P)**

{IN L.A.P.NO.191/2004 IN E.P.NO.113/2006 OF THE MUNSIFF'S COURT, CHAVAKKAD}

.....

**PETITIONER:**

C.K.JOHNSON, S/O. KOCHUMATHEW,
AGED 40 YEARS, CHEERAN HOUSE,
THAMPURANPADI, P.O.KOTTAPPADI.

BY ADV. SRI.P.RAMACHANDRAN

**RESPONDENT:**

INDIAN OVERSEAS BANK,
CHAVAKKAD BRANCH,
REPRESENTED BY ITS MANAGER.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## APPENDIX

**PETITIONERS' EXHIBITS:**

EXT.P1: TRUE COPY OF E.P.NO.113/06 IN LOK ADALATH PRELITIGATION 191/04 ON THE FILE OF THE MUNSIFF COURT, CHAVAKKAD.

EXT.P2: TRUE COPY OF THE COUNTER STATEMENT DATED 30.6.2006, BY THE PETITIONER IN E.P.113/2006 IN LOK ADALATH 191/04 ON THE FILE OF THE MUNSIFF COURT, CHAVAKKAD.

EXT.P3: TRUE COPY OF THE ORDER DATED 30.6.2006 IN E.P.NO.113/2006 IN LOK ADALATH 191/2004 ON THE FILE OF THE MUNSIFF COURT, CHAVAKKAD.

**RESPONDENTS' EXHIBITS: NIL**

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P.S. To Judge

**M.N.KRISHNAN, J.**

**W.P.(C) No.22826 of 2006 W**

**Dated this the 8th day of June, 2007.**

## JUDGMENT

The writ petitioner is the judgment debtor in L.A.P.No.191/2004 on the file of the Munsiff's Court, Chavakkad.

2. An execution petition was filed by the decree holder for realisation of Rs.57,000/-. As per the settlement in the Adlath, there was an agreement by the defendant/judgment debtor to pay off the entire amount on or before 30.6.2005 and in pursuance of the same, a compromise decree was passed. When the decree was put into execution, to put the decree holder in peril, the judgment debtor has raised a plea of no means.

3. When a decree is to be executed against a judgment debtor, the provisions of Orders XXI Rules 37, 38 and 40 are to be complied with. The court has to enter into a finding that the judgment debtor has sufficient means to pay the amount and he is intentionally evading payment to defeat the decree holder. Without adjudication of these points, the

learned Execution Court had ordered warrant. The said order is not legally sustainable. Therefore, it is set aside and the matter is remitted back to the Executing Court to give an opportunity to the decree holder to prove the means of the judgment debtor and his intention to evade payment of the decree amount.

4. Parties are directed to appear before the court below on **09.07.2007**. The amount already deposited by the judgment debtor shall be withdrawn by the decree holder and the judgment debtor is precluded from raising any objection in that regard.

Writ petition is disposed of as above.

Sd/-

**(M.N.KRISHNAN)**
**JUDGE**

sk/

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